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David N. Harris

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EXAMINER

ALVAREZ, RAQUEL

ART UNIT

PAPER NUMBER

3688

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID N. HARRIS

Application No. 09/760,271
Technology Center 3600

Mailed: June 29, 2009

Before KRISTA ZELE, *Deputy Chief Appeals Administrator*.
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 29, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

NON-FINAL REJECTION

The Non-Final Rejection issued May 1, 2007, indicates that Claims 1-3, 5-7, 9-11, 13-21, 23 and 24 are rejected under 35 U.S.C.

§ 102(b) as being anticipated by Blonder (5,708,422). However, the Non-Final rejection is silent as to the status of Claims 8, 12, 22 and 25-36. Claim 4 was cancelled in the Amendment filed February 23, 2007.

EXAMINER'S ANSWER

The Examiner's Answer issued March 26, 2008, indicates that Claims 1-3, 5- 24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Blonder (5,708,422).

The Examiner's Answer is not consistent with the grounds of rejection of claims set forth in the Non-Final Office action dated May 1, 2007. The grounds of rejection to be reviewed on appeal as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Furthermore, the examiner must provide a clear statement of whether examiner agrees or disagrees with the statement of grounds of rejection to be reviewed as set forth in the brief and an explanation of any disagreement. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 (8th ed. Rev. 6, Sept 2007) for details.

The inclusion of Claims 8, 12 and 22 in the above ground of rejection constitutes a New Ground of Rejection. It is noted that the required appendix heading "New Grounds of Rejection" has not been provided and/or argued in the Examiner's Answer. Further, the Examiner's Answer does not include the approval of the TC Director or his/her designee for the new ground of rejection.

Lastly, the status or disposition of Claims 25-36, has not been provided at all.

Correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

(1) “vacate” the Examiner’s Answer mailed March 26, 2008, AND issue a “Substitute” Examiner’s Answer correcting the rejection of the above claims on appeal and providing the disposition of the remaining claims as identified above; or

(2) alternatively issue a Supplemental Examiner’s Answer that includes the TC Director or his designee’s signature authorizing any new ground(s) of rejection;

(3) further clarifying the disposition of all pending claims;

(4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/clj

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